In the High Court of Punjab and Haryana, at Chandigarh.

R.S.A. No. 3654 of 2002

Date of Decision: 13.12.2007

B Raj (since deceased) now represented through his legal heirs.

…Appellant

Versus

Santosh Rani and Others

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Sanjeev K. Patial, Advocate
for Mr. Harsh Bunger, Advocate
for the appellant.

Mr. S.S.Behl, Advocate
for respondents No. 1 and 2.

RAJESH BINDAL, J.

The plaintiff is in second appeal before this Hon'ble Court against concurrent findings of fact recorded by both the Courts below, whereby the suit filed by him for possession and permanent injunction, was dismissed.

The case set up by the appellant/plaintiff (who is now represented through his legal heirs) was that he was real nephew of deceased Sukhdev Raj being son of his brother Tarlok Nath. Sukhdev Raj died issueless, whereas Tarlok Nath had two sons and three daughters. It is further stated that during the life time of deceased Sukhdev Raj, Santosh Rani started living on first floor of his house and after his death, she is in illegal occupation thereof and the appellant/plaintiff being real nephew of deceased Sukhdev Raj had become owner thereof and was entitled to the possession. Prayer for injunction restraining the respondents/defendants No.1 and 2, who were the contesting respondents, from alienating the property was also made.

The claim set up by the appellant/plaintiff was contested by the respondents/defendants No.1 and 2 with the plea that respondent No.1 used to serve deceased Sukhdev Raj and she was being treated by him as his

daughter. Even her marriage was also solemnised by Sukhdev Raj and they had been living with him as family members. The property in dispute was self-acquired property of Sukhdev Raj. It was further claimed that deceased Sukhdev Raj executed a will on February 16, 1987 in favour of Santosh Rani and Sulkhshna Rani, which was duly registered on February 17, 1987. In the will it was specifically admitted by him that he had adopted respondent No.2 Sulkhshna Rani. Sukhdev Raj died on March 3, 1990. The appellant or respondents No. 3 to 9 have no concern with the property in dispute as they did not even attend the last rites of deceased Sukhdev Raj.

In replication to the written statement, the appellant/plaintiff came out with a new plea stating therein that the earlier will dated February 16, 1987 was got cancelled by Sukhdev Raj on April 3, 1989 which plea was never set up by the appellant/plaintiff in the suit originally filed.

After considering the material placed on record by the parties, learned trial Court found that mere factum of projecting the will dated April 3, 1989 by the appellant/plaintiff in the replication cancelling the earlier will dated February 16, 1987 in favour of respondents No.1 and 2 clearly meant that the appellant/plaintiff admitted the execution of will in favour of respondents No.1 and 2 as otherwise there was no question of cancellation of any will. The attesting witnesses to the will Sohan Lal was examined as DW.2 who supported the execution of will. Another witness produced by the respondents No.1 and 2 also supported the claim set up by respondents No.1 and 2 regarding execution of will in their favour. It was also stated by them that at the time of execution of will there was no threat and Sukhdev Raj was in sound disposing mind. The appellant appearing as PW.1 in his evidence did not utter a single word about the will executed in favour of respondents No.1 and 2 being a result of undue influence or coercion or misrepresentation. Rather he was silent on the issue. In cross-examination he pleaded ignorance about the execution of that will.

It was also found on the basis of the material on record that respondents No.1 and 2 were living with Sukhdev Raj in his house at Mandi Gobindgarh. The factum of adoption of Sulkhshna Rani as daughter by deceased Sukhdev Raj is admitted in the will itself. While considering the deed dated April 3, 1989 projected by the appellant/plaintiff showing cancellation of the earlier will executed by deceased Sukhdev Raj on February 16, 1987, even the Court found that there were certain discrepancies in the evidence led by the appellant/plaintiff on that account as

in that document it was mentioned that the will in favour of Santosh Rani was being cancelled, whereas earlier will executed by Sukhdev Raj was in favour of Santosh Rani and Sulakshana Rani. Santosh Rani was shown to be widow of Mohan Lal whereas Mohan Lal was still alive. The relation of Sukhdev Raj with Santosh Rani and Sulakhshna Rani was said to be strained, which prompted him to cancel the will, however, it has come on record that even upto his death he lived with them. However, in spite of all these discrepancies, still giving due weightage to the document, learned trial Court held that as the will in favour of Santosh Rani had not been cancelled. Even if the document projected by the appellant is taken on its face value, Santosh Rani will have right to inherit the property of Sukhdev Raj. This is in spite of the fact that the document dated April 3, 1989 regarding cancellation of earlier will was not pleaded by the appellant in the plaint originally filed but the same came only in the replication. There is no reason forthcoming for the same as the document was in existence and in possession of the appellant/plaintiff much prior to the filing of the suit.

Even learned lower Appellate Court concurred with the findings recorded by learned trial Court and dismissed the appeal filed by the appellant. Even before this Court, learned counsel for the appellant/plaintiff had not been able to point out any material on record which could lead to the conclusion that the findings recorded by the Courts below are perverse. It is clearly established on the record that the will projected by respondents No.1 and 2 was a duly registered genuine document, which was executed by deceased Sukhdev Raj on February 16, 1987, much before his death on March 3, 1990. Execution and registration thereof was fully proved. Even though the document dated April 3, 1989 projected by the appellant/plaintiff was not fully proved but still the Court, giving due weightage to the same, found that the will executed by deceased Sukhdev Raj in favour of Sulakshna Rani had not been cancelled and the suit filed by the appellant/plaintiff was rightly dismissed.

No substantial question of law arises. Accordingly, the appeal is dismissed.

(Rajesh Bindal)
Judge

December 13, 2007
"DK"